

to any transition property (as defined in section 49(e) of this title), any property with respect to which qualified progress expenditures were previously taken into account under section 46(d) of this title, and any property described in section 46(b)(2)(C) of this title, as such sections were in effect on Nov. 4, 1990, see section 11813(c) of Pub. L. 101-508, set out as a note under section 45K of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1013(a)(13)(C), Nov. 10, 1988, 102 Stat. 3539, provided that: “The amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987.”

Amendment by section 1013(a)(11), (12), (29), (36) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 6180(b)(4), (5) of Pub. L. 100-647 applicable to bonds issued after Nov. 10, 1988, see section 6180(c) of Pub. L. 100-647, set out as a note under section 142 of this title.

EFFECTIVE DATE

Subsec. (f) applicable to bonds issued after Dec. 31, 1986, see section 1311(d) of Pub. L. 99-514, as amended, set out as an Effective Date; Transitional Rules note under section 141 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

SUBPART B—REQUIREMENTS APPLICABLE TO ALL STATE AND LOCAL BONDS

Sec.

148. Arbitrage.

149. Bonds must be registered to be tax exempt; other requirements.

§ 148. Arbitrage

(a) Arbitrage bond defined

For purposes of section 103, the term “arbitrage bond” means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bond) to be used directly or indirectly—

- (1) to acquire higher yielding investments, or
- (2) to replace funds which were used directly or indirectly to acquire higher yielding investments.

For purposes of this subsection, a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in paragraph (1) or (2).

(b) Higher yielding investments

For purposes of this section—

(1) In general

The term “higher yielding investments” means any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue.

(2) Investment property

The term “investment property” means—

- (A) any security (within the meaning of section 165(g)(2)(A) or (B)),
- (B) any obligation,
- (C) any annuity contract,
- (D) any investment-type property, or
- (E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

(3) Alternative minimum tax bonds treated as investment property in certain cases

(A) In general

Except as provided in subparagraph (B), the term “investment property” does not include any tax-exempt bond.

(B) Exception

With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C)), the term “investment property” includes a specified private activity bond (as so defined).

(4) Safe harbor for prepaid natural gas

(A) In general

The term “investment-type property” does not include a prepayment under a qualified natural gas supply contract.

(B) Qualified natural gas supply contract

For purposes of this paragraph, the term “qualified natural gas supply contract” means any contract to acquire natural gas for resale by a utility owned by a governmental unit if the amount of gas permitted to be acquired under the contract by the utility during any year does not exceed the sum of—

- (i) the annual average amount during the testing period of natural gas purchased (other than for resale) by customers of such utility who are located within the service area of such utility, and
- (ii) the amount of natural gas to be used to transport the prepaid natural gas to the utility during such year.

(C) Natural gas used to generate electricity

Natural gas used to generate electricity shall be taken into account in determining the average under subparagraph (B)(i)—

- (i) only if the electricity is generated by a utility owned by a governmental unit, and
- (ii) only to the extent that the electricity is sold (other than for resale) to customers of such utility who are located within the service area of such utility.

(D) Adjustments for changes in customer base**(i) New business customers**

If—

(I) after the close of the testing period and before the date of issuance of the issue, the utility owned by a governmental unit enters into a contract to supply natural gas (other than for resale) for a business use at a property within the service area of such utility, and

(II) the utility did not supply natural gas to such property during the testing period or the ratable amount of natural gas to be supplied under the contract is significantly greater than the ratable amount of gas supplied to such property during the testing period,

then a contract shall not fail to be treated as a qualified natural gas supply contract by reason of supplying the additional natural gas under the contract referred to in subclause (I).

(ii) Lost customers

The average under subparagraph (B)(i) shall not exceed the annual amount of natural gas reasonably expected to be purchased (other than for resale) by persons who are located within the service area of such utility and who, as of the date of issuance of the issue, are customers of such utility.

(E) Ruling requests

The Secretary may increase the average under subparagraph (B)(i) for any period if the utility owned by the governmental unit establishes to the satisfaction of the Secretary that, based on objective evidence of growth in natural gas consumption or population, such average would otherwise be insufficient for such period.

(F) Adjustment for natural gas otherwise on hand**(i) In general**

The amount otherwise permitted to be acquired under the contract for any period shall be reduced by—

(I) the applicable share of natural gas held by the utility on the date of issuance of the issue, and

(II) the natural gas (not taken into account under subclause (I)) which the utility has a right to acquire during such period (determined as of the date of issuance of the issue).

(ii) Applicable share

For purposes of the clause (i), the term “applicable share” means, with respect to any period, the natural gas allocable to such period if the gas were allocated ratably over the period to which the prepayment relates.

(G) Intentional acts

Subparagraph (A) shall cease to apply to any issue if the utility owned by the governmental unit engages in any intentional act

to render the volume of natural gas acquired by such prepayment to be in excess of the sum of—

(i) the amount of natural gas needed (other than for resale) by customers of such utility who are located within the service area of such utility, and

(ii) the amount of natural gas used to transport such natural gas to the utility.

(H) Testing period

For purposes of this paragraph, the term “testing period” means, with respect to an issue, the most recent 5 calendar years ending before the date of issuance of the issue.

(I) Service area

For purposes of this paragraph, the service area of a utility owned by a governmental unit shall be comprised of—

(i) any area throughout which such utility provided at all times during the testing period—

(I) in the case of a natural gas utility, natural gas transmission or distribution services, and

(II) in the case of an electric utility, electricity distribution services,

(ii) any area within a county contiguous to the area described in clause (i) in which retail customers of such utility are located if such area is not also served by another utility providing natural gas or electricity services, as the case may be, and

(iii) any area recognized as the service area of such utility under State or Federal law.

(c) Temporary period exception**(1) In general**

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that the proceeds of the issue of which such bond is a part may be invested in higher yielding investments for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued.

(2) Limitation on temporary period for pooled financings**(A) In general**

The temporary period referred to in paragraph (1) shall not exceed 6 months with respect to the proceeds of an issue which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons.

(B) Shorter temporary period for loan repayments, etc.

Subparagraph (A) shall be applied by substituting “3 months” for “6 months” with respect to the proceeds from the sale or repayment of any loan which are to be used to make or finance any loan. For purposes of the preceding sentence, a nonpurpose investment shall not be treated as a loan.

(C) Bonds used to provide construction financing

In the case of an issue described in subparagraph (A) any portion of which is used

to make or finance loans for construction expenditures (within the meaning of subsection (f)(4)(C)(iv))—

- (i) rules similar to the rules of subsection (f)(4)(C)(v) shall apply, and
- (ii) subparagraph (A) shall be applied with respect to such portion by substituting “2 years” for “6 months”.

(D) Exception for mortgage revenue bonds

This paragraph shall not apply to any qualified mortgage bond or qualified veterans’ mortgage bond.

(d) Special rules for reasonably required reserve or replacement fund

(1) In general

For purposes of subsection (a), a bond shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of the issue of which such bond is a part may be invested in higher yielding investments which are part of a reasonably required reserve or replacement fund. The amount referred to in the preceding sentence shall not exceed 10 percent of the proceeds of such issue unless the issuer establishes to the satisfaction of the Secretary that a higher amount is necessary.

(2) Limitation on amount in reserve or replacement fund which may be financed by issue

A bond issued as part of an issue shall be treated as an arbitrage bond if the amount of the proceeds from the sale of such issue which is part of any reserve or replacement fund exceeds 10 percent of the proceeds of the issue (or such higher amount which the issuer establishes is necessary to the satisfaction of the Secretary).

(e) Minor portion may be invested in higher yielding investments

Notwithstanding subsections (a), (c), and (d), a bond issued as part of an issue shall not be treated as an arbitrage bond solely by reason of the fact that an amount of the proceeds of such issue (in addition to the amounts under subsections (c) and (d)) is invested in higher yielding investments if such amount does not exceed the lesser of—

- (1) 5 percent of the proceeds of the issue, or
- (2) \$100,000.

(f) Required rebate to the United States

(1) In general

A bond which is part of an issue shall be treated as an arbitrage bond if the requirements of paragraphs (2) and (3) are not met with respect to such issue. The preceding sentence shall not apply to any qualified veterans’ mortgage bond.

(2) Rebate to United States

An issue shall be treated as meeting the requirements of this paragraph only if an amount equal to the sum of—

- (A) the excess of—
 - (i) the amount earned on all nonpurpose investments (other than investments attributable to an excess described in this subparagraph), over

- (ii) the amount which would have been earned if such nonpurpose investments were invested at a rate equal to the yield on the issue, plus

(B) any income attributable to the excess described in subparagraph (A),

is paid to the United States by the issuer in accordance with the requirements of paragraph (3).

(3) Due date of payments under paragraph (2)

Except to the extent provided by the Secretary, the amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which ensures that 90 percent of the amount described in paragraph (2) with respect to the issue at the time payment of such installment is required will have been paid to the United States. The last installment shall be made no later than 60 days after the day on which the last bond of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in paragraph (2) with respect to such issue. A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond. In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.

(4) Special rules for applying paragraph (2)

(A) In general

In determining the aggregate amount earned on nonpurpose investments for purposes of paragraph (2)—

- (i) any gain or loss on the disposition of a nonpurpose investment shall be taken into account, and
- (ii) any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than \$100,000.

In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.

(B) Temporary investments

Under regulations prescribed by the Secretary—

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if—

- (I) the gross proceeds of such issue are expended for the governmental purposes

for which the issue was issued no later than the day which is 6 months after the date of issuance of the issue, and

(II) the requirements of paragraph (2) are met with respect to amounts not required to be spent as provided in subclause (I) (other than earnings on amounts in any bona fide debt service fund).

Gross proceeds which are held in a bona fide debt service fund or a reasonably required reserve or replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only.

(ii) Additional period for certain bonds

(I) In general

In the case of an issue described in subclause (II), clause (i) shall be applied by substituting “1 year” for “6 months” each place it appears with respect to the portion of the proceeds of the issue which are not expended in accordance with clause (i) if such portion does not exceed 5 percent of the proceeds of the issue.

(II) Issues to which subclause (I) applies

An issue is described in this subclause if no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond) or a tax or revenue anticipation bond.

(iii) Safe harbor for determining when proceeds of tax and revenue anticipation bonds are expended

(I) In general

For purposes of clause (i), in the case of an issue of tax or revenue anticipation bonds, the net proceeds of such issue (including earnings thereon) shall be treated as expended for the governmental purpose of the issue on the 1st day after the date of issuance that the cumulative cash flow deficit to be financed by such issue exceeds 90 percent of the proceeds of such issue.

(II) Cumulative cash flow deficit

For purposes of subclause (I), the term “cumulative cash flow deficit” means, as of the date of computation, the excess of the expenses paid during the period described in subclause (III) which would ordinarily be paid out of or financed by anticipated tax or other revenues over the aggregate amount available (other than from the proceeds of the issue) during such period for the payment of such expenses.

(III) Period involved

For purposes of subclause (II), the period described in this subclause is the period beginning on the date of issuance of the issue and ending on the earlier of the date 6 months after such date of issuance or the date of the computation of cumulative cash flow deficit.

(iv) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of an issue shall not be treated as expended for the governmental purposes of the issue.

(C) Exception from rebate for certain proceeds to be used to finance construction expenditures

(i) In general

In the case of a construction issue, paragraph (2) shall not apply to the available construction proceeds of such issue if the spending requirements of clause (ii) are met.

(ii) Spending requirements

The spending requirements of this clause are met if at least—

(I) 10 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 6-month period beginning on the date the bonds are issued,

(II) 45 percent of such proceeds are spent for such purposes within the 1-year period beginning on such date,

(III) 75 percent of such proceeds are spent for such purposes within the 18-month period beginning on such date, and

(IV) 100 percent of such proceeds are spent for such purposes within the 2-year period beginning on such date.

(iii) Exception for reasonable retainage

The spending requirement of clause (ii)(IV) shall be treated as met if—

(I) such requirement would be met at the close of such 2-year period but for a reasonable retainage (not exceeding 5 percent of the available construction proceeds of the construction issue), and

(II) 100 percent of the available construction proceeds of the construction issue are spent for the governmental purposes of the issue within the 3-year period beginning on the date the bonds are issued.

(iv) Construction issue

For purposes of this subparagraph, the term “construction issue” means any issue if—

(I) at least 75 percent of the available construction proceeds of such issue are to be used for construction expenditures with respect to property which is to be owned by a governmental unit or a 501(c)(3) organization, and

(II) all of the bonds which are part of such issue are qualified 501(c)(3) bonds, bonds which are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a 501(c)(3) organization.

For purposes of this subparagraph, the term “construction” includes reconstruc-

tion and rehabilitation, and rules similar to the rules of section 142(b)(1)(B) shall apply.

(v) Portions of issues used for construction

If—

(I) all of the construction expenditures to be financed by an issue are to be financed from a portion thereof, and

(II) the issuer elects to treat such portion as a construction issue for purposes of this subparagraph,

then, for purposes of this subparagraph and subparagraph (B), such portion shall be treated as a separate issue.

(vi) Available construction proceeds

For purposes of this subparagraph—

(I) In general

The term “available construction proceeds” means the amount equal to the issue price (within the meaning of sections 1273 and 1274) of the construction issue, increased by earnings on the issue price, earnings on amounts in any reasonably required reserve or replacement fund not funded from the issue, and earnings on all of the foregoing earnings, and reduced by the amount of the issue price in any reasonably required reserve or replacement fund and the issuance costs financed by the issue.

(II) Earnings on reserve included only for certain periods

The term “available construction proceeds” shall not include amounts earned on any reasonably required reserve or replacement fund after the earlier of the close of the 2-year period described in clause (ii) or the date the construction is substantially completed.

(III) Payments on acquired purpose obligations excluded

The term “available construction proceeds” shall not include payments on any obligation acquired to carry out the governmental purposes of the issue and shall not include earnings on such payments.

(IV) Election to rebate on earnings on reserve

At the election of the issuer, the term “available construction proceeds” shall not include earnings on any reasonably required reserve or replacement fund.

(vii) Election to pay penalty in lieu of rebate

(I) In general

At the election of the issuer, paragraph (2) shall not apply to available construction proceeds which do not meet the spending requirements of clause (ii) if the issuer pays a penalty, with respect to each 6-month period after the date the bonds were issued, equal to 1½ percent of the amount of the available construction proceeds of the issue which, as of the close of such 6-month period, is not spent as required by clause (ii).

(II) Termination

The penalty imposed by this clause shall cease to apply only as provided in clause (viii) or after the latest maturity date of any bond in the issue (including any refunding bond with respect thereto).

(viii) Election to terminate 1½ percent penalty

At the election of the issuer (made not later than 90 days after the earlier of the end of the initial temporary period or the date the construction is substantially completed), the penalty under clause (vii) shall not apply to any 6-month period after the initial temporary period under subsection (c) if the requirements of subclauses (I), (II), and (III) are met.

(I) 3 percent penalty

The requirement of this subclause is met if the issuer pays a penalty equal to 3 percent of the amount of available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period multiplied by the number of years (including fractions thereof) in the initial temporary period.

(II) Yield restriction at close of temporary period

The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the close of such initial temporary period is invested at a yield not exceeding the yield on the issue or which is invested in any tax-exempt bond which is not investment property.

(III) Redemption of bonds at earliest call date

The requirement of this subclause is met if the amount of the available construction proceeds of the issue which is not spent for the governmental purposes of the issue as of the earliest date on which bonds may be redeemed is used to redeem bonds on such date.

(ix) Election to terminate 1½ percent penalty before end of temporary period

If—

(I) the construction to be financed by a construction issue is substantially completed before the end of the initial temporary period,

(II) the issuer identifies an amount of available construction proceeds which will not be spent for the governmental purposes of the issue,

(III) the issuer has made the election under clause (viii), and

(IV) the issuer makes an election under this clause before the close of the initial temporary period and not later than 90 days after the date the construction is substantially completed,

then clauses (vii) and (viii) shall be applied to the available construction proceeds so

identified as if the initial temporary period ended as of the date the election is made.

(x) Failure to pay penalties

In the case of a failure (which is not due to willful neglect) to pay any penalty required to be paid under clause (vii) or (viii) in the amount or at the time prescribed therefor, the Secretary may treat such failure as not occurring if, in addition to paying such penalty, the issuer pays a penalty equal to the sum of—

(I) 50 percent of the amount which was not paid in accordance with clauses (vii) and (viii), plus

(II) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this clause. Bonds which are part of an issue with respect to which there is a failure to pay the amount required under this clause (and any refunding bond with respect thereto) shall be treated as not being, and as never having been, tax-exempt bonds.

(xi) Election for pooled financing bonds

At the election of the issuer of an issue the proceeds of which are to be used to make or finance loans (other than nonpurpose investments) to 2 or more persons, the periods described in clauses (ii) and (iii) shall begin on—

(I) the date the loan is made, in the case of loans made within the 1-year period after the date the bonds are issued, and

(II) the date following such 1-year period, in the case of loans made after such 1-year period.

If such an election applies to an issue, the requirements of paragraph (2) shall apply to amounts earned before the beginning of the periods determined under the preceding sentence.

(xii) Payments of principal not to affect requirements

For purposes of this subparagraph, payments of principal on the bonds which are part of the construction issue shall not be treated as an expenditure of the available construction proceeds of the issue.

(xiii) Refunding bonds

(I) In general

Except as provided in this clause, clause (vii)(II), and the last sentence of clause (x), this subparagraph shall not apply to any refunding bond and no proceeds of a refunded bond shall be treated for purposes of this subparagraph as proceeds of a refunding bond.

(II) Determination of construction portion of issue

For purposes of clause (v), any portion of an issue which is used to refund any

issue (or portion thereof) shall be treated as a separate issue.

(III) Coordination with rebate requirement on refunding bonds

The requirements of paragraph (2) shall be treated as met with respect to earnings for any period if a penalty is paid under clause (vii) or (viii) with respect to such earnings for such period.

(xiv) Elections

Any election under this subparagraph (other than clauses (viii) and (ix)) shall be made on or before the date the bonds are issued; and, once made, shall be irrevocable.

(xv) Time for payment of penalties

Any penalty under this subparagraph shall be paid to the United States not later than 90 days after the period to which the penalty relates.

(xvi) Treatment of bona fide debt service funds

If the spending requirements of clause (ii) are met with respect to the available construction proceeds of a construction issue, then paragraph (2) shall not apply to earnings on a bona fide debt service fund for such issue.

(D) Exception for governmental units issuing \$5,000,000 or less of bonds

(i) In general

An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraphs (2) and (3) if—

(I) the issue is issued by a governmental unit with general taxing powers,

(II) no bond which is part of such issue is a private activity bond,

(III) 95 percent or more of the net proceeds of such issue are to be used for local governmental activities of the issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the issuer), and

(IV) the aggregate face amount of all tax-exempt bonds (other than private activity bonds) issued by such unit during the calendar year in which such issue is issued is not reasonably expected to exceed \$5,000,000.

(ii) Aggregation of issuers

For purposes of subclause (IV) of clause (i)—

(I) an issuer and all entities which issue bonds on behalf of such issuer shall be treated as 1 issuer,

(II) all bonds issued by a subordinate entity shall, for purposes of applying such subclause to each other entity to which such entity is subordinate, be treated as issued by such other entity, and

(III) an entity formed (or, to the extent provided by the Secretary, availed of) to avoid the purposes of such subclause (IV) and all other entities benefiting thereby shall be treated as 1 issuer.

(iii) Certain refunding bonds not taken into account in determining small issuer status

There shall not be taken into account under subclause (IV) of clause (i) any bond issued to refund (other than to advance refund) any bond to the extent the amount of the refunding bond does not exceed the outstanding amount of the refunded bond.

(iv) Certain issues issued by subordinate governmental units, etc., exempt from rebate requirement

An issue issued by a subordinate entity of a governmental unit with general taxing powers shall be treated as described in clause (i)(I) if the aggregate face amount of such issue does not exceed the lesser of—

(I) \$5,000,000, or

(II) the amount which, when added to the aggregate face amount of other issues issued by such entity, does not exceed the portion of the \$5,000,000 limitation under clause (i)(IV) which such governmental unit allocates to such entity.

For purposes of the preceding sentence, an entity which issues bonds on behalf of a governmental unit with general taxing powers shall be treated as a subordinate entity of such unit. An allocation shall be taken into account under subclause (II) only if it is irrevocable and made before the issuance date of such issue and only to the extent that the limitation so allocated bears a reasonable relationship to the benefits received by such governmental unit from issues issued by such entity.

(v) Determination of whether refunding bonds eligible for exception from rebate requirement

If any portion of an issue is issued to refund other bonds, such portion shall be treated as a separate issue which does not meet the requirements of paragraphs (2) and (3) by reason of this subparagraph unless—

(I) the aggregate face amount of such issue does not exceed \$5,000,000,

(II) each refunded bond was issued as part of an issue which was treated as meeting the requirements of paragraphs (2) and (3) by reason of this subparagraph,

(III) the average maturity date of the refunding bonds issued as part of such issue is not later than the average maturity date of the bonds to be refunded by such issue, and

(IV) no refunding bond has a maturity date which is later than the date which is 30 years after the date the original bond was issued.

Subclause (III) shall not apply if the average maturity of the issue of which the original bond was a part (and of the issue of which the bonds to be refunded are a part) is 3 years or less. For purposes of this clause, average maturity shall be deter-

mined in accordance with section 147(b)(2)(A).

(vi) Refundings of bonds issued under law prior to Tax Reform Act of 1986

If section 141(a) did not apply to any refunded bond, the issue of which such refunded bond was a part shall be treated as meeting the requirements of subclause (II) of clause (v) if—

(I) such issue was issued by a governmental unit with general taxing powers,

(II) no bond issued as part of such issue was an industrial development bond (as defined in section 103(b)(2), but without regard to subparagraph (B) of section 103(b)(3)) or a private loan bond (as defined in section 103(o)(2)(A), but without regard to any exception from such definition other than section 103(o)(2)(C)), and

(III) the aggregate face amount of all tax-exempt bonds (other than bonds described in subclause (II)) issued by such unit during the calendar year in which such issue was issued did not exceed \$5,000,000.

References in subclause (II) to section 103 shall be to such section as in effect on the day before the date of the enactment of the Tax Reform Act of 1986. Rules similar to the rules of clauses (ii) and (iii) shall apply for purposes of subclause (III). For purposes of subclause (II) of clause (i), bonds described in subclause (II) of this clause to which section 141(a) does not apply shall not be treated as private activity bonds.

(vii) Increase in exception for bonds financing public school capital expenditures

Each of the \$5,000,000 amounts in the preceding provisions of this subparagraph shall be increased by the lesser of \$10,000,000 or so much of the aggregate face amount of the bonds as are attributable to financing the construction (within the meaning of subparagraph (C)(iv)) of public school facilities.

(5) Exemption from gross income of sum rebated

Gross income shall not include the sum described in paragraph (2). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under paragraph (2).

(6) Definitions

For purposes of this subsection and subsections (c) and (d)—

(A) Nonpurpose investment

The term “nonpurpose investment” means any investment property which—

(i) is acquired with the gross proceeds of an issue, and

(ii) is not acquired in order to carry out the governmental purpose of the issue.

(B) Gross proceeds

Except as otherwise provided by the Secretary, the gross proceeds of an issue include—

- (i) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and
- (ii) amounts to be used to pay debt service on the issue.

(7) Penalty in lieu of loss of tax exemption

In the case of an issue which would (but for this paragraph) fail to meet the requirements of paragraph (2) or (3), the Secretary may treat such issue as not failing to meet such requirements if—

- (A) no bond which is part of such issue is a private activity bond (other than a qualified 501(c)(3) bond),
- (B) the failure to meet such requirements is not due to willful neglect, and
- (C) the issuer pays to the United States a penalty in an amount equal to the sum of—
 - (i) 50 percent of the amount which was not paid in accordance with paragraphs (2) and (3), plus
 - (ii) interest (at the underpayment rate established under section 6621) on the portion of the amount which was not paid on the date required under paragraph (3) for the period beginning on such date.

The Secretary may waive all or any portion of the penalty under this paragraph.

(g) Student loan incentive payments

Except to the extent otherwise provided in regulations, payments made by the Secretary of Education pursuant to section 438 of the Higher Education Act of 1965 are not to be taken into account, for purposes of subsection (a)(1), in determining yields on student loan notes.

(h) Determinations of yield

For purposes of this section, the yield on an issue shall be determined on the basis of the issue price (within the meaning of sections 1273 and 1274).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 99-514, title XIII, § 1301(b), Oct. 22, 1986, 100 Stat. 2641; amended Pub. L. 100-647, title I, § 1013(a)(14)–(16)(A), (17)(A), (B), (18), (19), (43)(A), (B), title IV, § 4005(d)(2), title V, § 5053(b), title VI, §§ 6177(a), (b), 6181(a), (b), 6183(a), Nov. 10, 1988, 102 Stat. 3539, 3540, 3542, 3545, 3646, 3678, 3726, 3727, 3729; Pub. L. 101-239, title VII, §§ 7652(a)–(d), 7814(c)(2), 7816(r), (t), Dec. 19, 1989, 103 Stat. 2385-2387, 2413, 2423; Pub. L. 101-508, title XI, § 11701(j)(1)–(6), Nov. 5, 1990, 104 Stat. 1388-508 to 1388-513; Pub. L. 105-34, title II, § 223(a), title XIV, §§ 1441-1444, Aug. 5, 1997, 111 Stat. 818, 1053, 1054; Pub. L. 107-16, title IV, § 421(a), June 7, 2001, 115 Stat. 64; Pub. L. 109-58, title XIII, § 1327(a), Aug. 8, 2005, 119 Stat. 1017; Pub. L. 109-222, title V, § 508(c), May 17, 2006, 120 Stat. 362; Pub. L. 115-97, title I, § 13532(b)(2), Dec. 22, 2017, 131 Stat. 2154.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (f)(4)(C)(vi), is the date of enactment of Pub. L. 99-514, which was approved Oct. 22, 1986.

Section 438 of the Higher Education Act of 1965, referred to in subsec. (g), is classified to section 1087-1 of Title 20, Education.

AMENDMENTS

2017—Subsec. (f)(4)(C)(xiv) to (xvii). Pub. L. 115-97 redesignated cls. (xv) to (xvii) as (xiv) to (xvi), respectively, and struck out former cl. (xiv). Prior to amendment, text of cl. (xiv) read as follows: “For purposes of this subparagraph, the end of the initial temporary period shall be determined without regard to section 149(d)(3)(A)(iv).”

2006—Subsec. (f)(4)(D)(ii)(II) to (IV). Pub. L. 109-222 redesignated subcls. (III) and (IV) as (II) and (III), respectively, and struck out former subcl. (II) which read as follows: “all bonds issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying such subclause to such unit, be treated as not issued by such unit.”

2005—Subsec. (b)(4). Pub. L. 109-58 added par. (4).

2001—Subsec. (f)(4)(D)(vii). Pub. L. 107-16 substituted “the lesser of \$10,000,000” for “the lesser of \$5,000,000”.

1997—Subsec. (c)(2)(B) to (E). Pub. L. 105-34, § 1444(a), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out heading and text of former subpar. (B). Text read as follows: “In the case of the proceeds of an issue to be used to make or finance loans under a program described in section 144(b)(1)(A), subparagraph (A) shall be applied by substituting ‘18 months’ for ‘6 months’. The preceding sentence shall not apply to any bond issued after December 31, 1988.”

Subsec. (d)(3). Pub. L. 105-34, § 1443, struck out par. (3) which related to limitations on investment in nonpurpose investments.

Subsec. (f)(4)(B)(ii)(I). Pub. L. 105-34, § 1441, substituted “5 percent of the proceeds of the issue” for “the lesser of 5 percent of the proceeds of the issue or \$100,000”.

Subsec. (f)(4)(C)(xvii). Pub. L. 105-34, § 1442, added cl. (xvii).

Subsec. (f)(4)(D)(vii). Pub. L. 105-34, § 223(a), added cl. (vii).

Subsec. (f)(4)(E). Pub. L. 105-34, § 1444(b), struck out subpar. (E) which related to exception for certain qualified student loan bonds.

1990—Subsec. (c)(2)(D). Pub. L. 101-508, § 11701(j)(5), substituted “subsection (f)(4)(C)(iv)” for “subsection (f)(4)(B)(iv)(IV)” in introductory provisions and “subsection (f)(4)(C)(v)” for “subsection (f)(4)(B)(iv)(VIII)” in cl. (i).

Subsec. (c)(2)(D), (E). Pub. L. 101-508, § 11701(j)(6), made technical amendment to Pub. L. 101-239, § 7652(c). See 1989 Amendment note below.

Subsec. (f)(4)(B)(i). Pub. L. 101-508, § 11701(j)(2), substituted in last sentence “replacement fund, and gross proceeds which arise after such 6 months and which were not reasonably anticipated as of the date of issuance, shall not be considered gross proceeds for purposes of subclause (I) only” for “replacement fund shall not be considered gross proceeds for purposes of this subparagraph only” in concluding provisions.

Subsec. (f)(4)(B)(ii)(II). Pub. L. 101-508, § 11701(j)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: “the requirements of paragraph (2) are met after such 6 months with respect to earnings on amounts in any reasonably required reserve or replacement fund.”

Subsec. (f)(4)(B)(iv). Pub. L. 101-508, § 11701(j)(4), amended cl. (iv) generally, substituting present provisions for provisions which provided for a special rule to be applied during a 2-year period for certain construction bonds from issues in which at least 75 percent of the net proceeds of the issue were to be used for con-

struction expenditures with respect to property which was owned by a governmental unit or a 501(c)(3) organization.

Subsec. (f)(4)(C) to (E). Pub. L. 101-508, § 11701(j)(3)(A), (B), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

1989—Subsec. (c)(2)(D), (E). Pub. L. 101-239, § 7652(c), as amended by Pub. L. 101-508, § 11701(j)(6), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (d)(3)(E)(ii). Pub. L. 101-239, § 7814(c)(2), struck out “a qualified mortgage bond or” after “in the case of”.

Subsec. (f)(4)(B)(i). Pub. L. 101-239, § 7652(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “An issue shall, for purposes of this subsection, be treated as meeting the requirements of paragraph (2) if the gross proceeds of such issue are expended for the governmental purpose for which the issue was issued by no later than the day which is 6 months after the date of issuance of such issue. Gross proceeds which are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of this subparagraph only.”

Subsec. (f)(4)(B)(i)(I). Pub. L. 101-239, § 7652(d), inserted “each place it appears” after “6 months”.

Subsec. (f)(4)(B)(iii)(III). Pub. L. 101-239, § 7816(r), substituted “such date of issuance or the date” for “such date of issuance, or the date”.

Subsec. (f)(4)(B)(iv). Pub. L. 101-239, § 7652(b), added cl. (iv).

Subsec. (f)(4)(C)(ii)(II). Pub. L. 101-239, § 7816(t), substituted “to make loans to” for “on behalf of”.

1988—Subsec. (b)(2). Pub. L. 100-647, § 1013(a)(43)(B), struck out at end “Such term shall not include any tax-exempt bond.”

Subsec. (b)(2)(E). Pub. L. 100-647, § 5053(b), added subpar. (E).

Subsec. (b)(3). Pub. L. 100-647, § 1013(a)(43)(A), added par. (3).

Subsec. (d)(2). Pub. L. 100-647, § 1013(a)(14), substituted “any reserve or replacement fund” for “any fund described in paragraph (1)”.

Subsec. (f)(1). Pub. L. 100-647, § 4005(d)(2), struck out “qualified mortgage bond or” after “apply to any”.

Subsec. (f)(3). Pub. L. 100-647, § 6177(b), inserted at end “In the case of a tax and revenue anticipation bond, the last installment shall not be required to be made before the date 8 months after the date of issuance of the issue of which the bond is a part.”

Pub. L. 100-647, § 1013(a)(15), inserted “A series of issues which are redeemed during a 6-month period (or such longer period as the Secretary may prescribe) shall be treated (at the election of the issuer) as 1 issue for purposes of the preceding sentence if no bond which is part of any issue in such series has a maturity of more than 270 days or is a private activity bond.”

Subsec. (f)(4)(A). Pub. L. 100-647, § 6181(a), (b), struck out “unless the issuer otherwise elects,” before “any amount earned” in cl. (i) and inserted at end of subpar. (A) “In the case of an issue no bond of which is a private activity bond, clause (ii) shall be applied without regard to the dollar limitation therein if the average maturity of the issue (determined in accordance with section 147(b)(2)(A)) is at least 5 years and the rates of interest on bonds which are part of the issue do not vary during the term of the issue.”

Subsec. (f)(4)(B)(iii)(I). Pub. L. 100-647, § 1013(a)(16)(A), substituted “proceeds” for “aggregate face amount”.

Subsec. (f)(4)(B)(iii)(III). Pub. L. 100-647, § 6177(a), substituted “the earlier of the date 6 months after such date of issuance,” for “the earliest of the maturity date of the issue, the date 6 months after such date of issuance,”.

Subsec. (f)(4)(C). Pub. L. 100-647, § 1013(a)(17)(A), in heading substituted “governmental units issuing \$5,000,000 or less of bonds” for “small governmental units”, designated existing provision as cl. (i), inserted heading “In general”, redesignated existing cls. (i) to (iv) as subcls. (I) to (IV) and realigned their margins, struck out last sentence providing that cl. (iv) not take into account any bond which is not outstanding at the

time of a later issue or which is redeemed, other than in an advance refunding, from the net proceeds of the later issue, and added cls. (ii) to (vi).

Subsec. (f)(4)(C)(i)(IV). Pub. L. 100-647, § 1013(a)(17)(B), struck out “(and all subordinate entities thereof)” after “such unit”.

Subsec. (f)(4)(C)(ii). Pub. L. 100-647, § 6183(a), added subcl. (II) and redesignated former subcls. (II) and (III) as (III) and (IV), respectively.

Subsec. (f)(4)(D)(i). Pub. L. 100-647, § 1013(a)(18), inserted “for a program” before “described in section 144(b)(1)(A)” in introductory text, substituted “such program” for “such a program” in subcl. (I), and inserted at end “Amounts designated as interest on student loans shall not be taken into account in determining whether the issuer is reimbursed for such costs. Except as otherwise hereafter provided in regulations prescribed by the Secretary, costs described in subclause (I) paid from amounts earned as described in the first sentence of this clause may also be taken into account in determining the yield on the student loans under a program described in section 144(b)(1)(A).”

Subsec. (f)(7)(B). Pub. L. 100-647, § 1013(a)(19), substituted “not due” for “due to reasonable cause and not”.

EFFECTIVE DATE OF 2017 AMENDMENT

Pub. L. 115-97, title I, § 13532(c), Dec. 22, 2017, 131 Stat. 2154, provided that: “The amendments made by this section [amending this section and section 149 of this title] shall apply to advance refunding bonds issued after December 31, 2017.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-222, title V, § 508(e), May 17, 2006, 120 Stat. 362, provided that: “The amendments made by this section [amending this section and sections 54 and 149 of this title] shall apply to bonds issued after the date of the enactment of this Act [May 17, 2006].”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-58 applicable to obligations issued after Aug. 8, 2005, see section 1327(d) of Pub. L. 109-58, set out as a note under section 141 of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title IV, § 421(b), June 7, 2001, 115 Stat. 65, provided that: “The amendment made by subsection (a) [amending this section] shall apply to obligations issued in calendar years beginning after December 31, 2001.”

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title II, § 223(b), Aug. 5, 1997, 111 Stat. 818, provided that: “The amendments made by this section [amending this section] shall apply to bonds issued after December 31, 1997.”

Pub. L. 105-34, title XIV, § 1445, Aug. 5, 1997, 111 Stat. 1054, provided that: “The amendments made by this subtitle [subtitle B (§§ 1441-1445) of title XIV of Pub. L. 105-34, amending this section] shall apply to bonds issued after the date of the enactment of this Act [Aug. 5, 1997].”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

Pub. L. 101-508, title XI, § 11701(j)(8), Nov. 5, 1990, 104 Stat. 1388-513, provided that: “Section 148(f)(4)(C)(xiii)(II) of such Code (as added by this subsection) shall apply only to refunding bonds issued after August 3, 1990.”

EFFECTIVE DATE OF 1989 AMENDMENT

Pub. L. 101-239, title VII, § 7652(e), Dec. 19, 1989, 103 Stat. 2387, provided that: “The amendments made by

this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Dec. 19, 1989].”

Amendment by sections 7814(c)(2) and 7816(r), (t) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, § 1013(a)(16)(B), Nov. 10, 1988, 102 Stat. 3540, provided that: “The amendment made by subparagraph (A) [amending this section] shall apply to bonds issued after June 30, 1987.”

Pub. L. 100-647, title I, § 1013(a)(17)(C), Nov. 10, 1988, 102 Stat. 3542, provided that:

“(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section] shall apply to bonds issued after June 30, 1987.

“(ii) At the election of an issuer (made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe), the amendments made by this paragraph shall apply to such issuer as if included in the amendments made by section 1301(a) of the Tax Reform Act of 1986 [amending section 103 of this title].”

Pub. L. 100-647, title I, § 1013(a)(43)(C), Nov. 10, 1988, 102 Stat. 3545, provided that: “The amendments made by this paragraph [amending this section] shall apply to obligations issued after March 31, 1988.”

Amendment by section 1013(a)(14), (15), (18), (19) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Amendment by section 4005(d)(2) of Pub. L. 100-647 applicable to bonds issued, and nonissued bond amounts elected, after Dec. 31, 1988, see section 4005(h)(1) of Pub. L. 100-647, set out as a note under section 143 of this title.

Amendment by section 5053(b) of Pub. L. 100-647 applicable, with certain exceptions, to obligations issued after Oct. 21, 1988, see section 5053(c) of Pub. L. 100-647, set out as a note under section 145 of this title.

Pub. L. 100-647, title VI, § 6177(c), Nov. 10, 1988, 102 Stat. 3727, provided that: “The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].”

Pub. L. 100-647, title VI, § 6181(c), Nov. 10, 1988, 102 Stat. 3729, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to bonds issued after the date of the enactment of this Act [Nov. 10, 1988].

“(2) ELECTION FOR OUTSTANDING BONDS.—Any issue of bonds other than private activity bonds outstanding as of the date of the enactment of this Act shall be allowed a 1-time election to apply the amendments made by subsection (b) [amending this section] to amounts deposited after such date in bona fide debt service funds of such bonds.

“(3) DEFINITION OF PRIVATE ACTIVITY BOND.—For purposes of this section and the last sentence of section 148(f)(4)(A) of the 1986 Code (as added by subsection (b)), the term ‘private activity bond’ shall include any qualified 501(c)(3) bond (as defined under section 145 of the 1986 Code).”

Pub. L. 100-647, title VI, § 6183(b), Nov. 10, 1988, 102 Stat. 3730, provided that: “The amendment made by subsection (a) [amending this section] shall apply to bonds issued after December 31, 1988.”

EFFECTIVE DATE

Subpart applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of

Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EXTENSION OF PERIOD TO ELECT TO TERMINATE PERCENT PENALTY FOR BONDS ISSUED BEFORE NOVEMBER 5, 1990

Pub. L. 101-508, title XI, § 11701(j)(7), Nov. 5, 1990, 104 Stat. 1388-513, provided that: “In the case of a bond issued before the date of the enactment of this Act [Nov. 5, 1990], the period for making the election under section 148(f)(4)(C)(viii) of the Internal Revenue Code of 1986 (as added by this subsection) shall not expire before the date which is 180 days after such date of enactment.”

AMENDMENT TO ARBITRAGE REGULATIONS

Pub. L. 99-514, title XIII, § 1301(c), Oct. 22, 1986, 100 Stat. 2654, provided that: “The provision in the Federal income tax regulations relating to the arbitrage requirements which permits a higher yield on acquired obligations if the issuer elects to waive the benefits of the temporary period provisions shall not apply to bonds issued after August 31, 1986.”

§ 149. Bonds must be registered to be tax exempt; other requirements

(a) Bonds must be registered to be tax exempt

(1) General rule

Nothing in section 103(a) or in any other provision of law shall be construed to provide an exemption from Federal income tax for interest on any registration-required bond unless such bond is in registered form.

(2) Registration-required bond

For purposes of paragraph (1), the term “registration-required bond” means any bond other than a bond which—

- (A) is not of a type offered to the public, or
- (B) has a maturity (at issue) of not more than 1 year.

(3) Special rules

(A) Book entries permitted

For purposes of paragraph (1), a book entry bond shall be treated as in registered form if the right to the principal of, and stated interest on, such bond may be transferred only through a book entry consistent with regulations prescribed by the Secretary.

(B) Nominees

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of paragraph (1) where there is a nominee or chain of nominees.

(b) Federally guaranteed bond is not tax exempt

(1) In general

Section 103(a) shall not apply to any State or local bond if such bond is federally guaranteed.

(2) Federally guaranteed defined

For purposes of paragraph (1), a bond is federally guaranteed if—

- (A) the payment of principal or interest with respect to such bond is guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof),
- (B) such bond is issued as part of an issue and 5 percent or more of the proceeds of such issue is to be—